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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 JUSTIN CODY HARPER,

12 Plaintiff,

13 vs.

14 CITY OF REDLANDS, REDLANDS  
15 POLICE DEPARTMENT, POLICE  
16 OFFICER KOAHOU, and DOES 1  
through 10 Inclusive,

17 Defendants.  
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Case No.: CV23-00695 SSS (KK)  
Judge: Hon. Sunshine Sykes

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION IN LIMINE  
NO. 1 TO EXCLUDE INFORMATION  
UNKNOWN TO OFFICER KOAHOU**

**Final Pre-trial Conference**

Date: April 4, 2025

Time: 1:00 pm

Courtroom: 2

**Trial**

Date: April 21, 2025

Time: 9:00 am

Courtroom: 2

Complaint Filed: April 19, 2023

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1 **I. INTRODUCTION**

2 This action stems from an officer-involved shooting that occurred on  
3 September 9, 2021, after Plaintiff, in a stolen vehicle, led Redlands Officer Koahou  
4 on a high-speed pursuit, crashed the stolen vehicle, and carjacked a second vehicle.  
5 In his Motion in Limine No. 1, Plaintiffs ask this Court to exclude evidence of (1)  
6 Harper's drug use and intoxication on the day of the incident; (2) That Harper was  
7 a felon in possession of a firearm during the pursuit; and (3) Harper's criminal  
8 record and extensive disciplinary problems while incarcerated. As discussed in  
9 detail below, this evidence is directly relevant, highly probative and admissible for  
10 the purposes for which it is offered. Accordingly, Plaintiff's Motion in Limine No.  
11 1 should be denied in its entirety.

12  
13 **II. FACTS AND EVIDENCE IMPORTANT TO THIS OPPOSITION**

14 On September 9, 2021, at approximately 4:00 a.m., Plaintiff Justin Harper  
15 smoked methamphetamine, taking approximately "10 hits." Ever since he was 18,  
16 Harper had smoked methamphetamine every few hours, conduct which would  
17 cause him to become "irritated" and which had caused him to get into  
18 approximately 10 to 15 physical fights. Harper has a criminal history which was so  
19 extensive that he had trouble recalling it during his deposition, but he did admit  
20 that he had a prior "strike" prior, another prior for felony evading, and was on  
21 "PTRS" (a cross between parole and probation) at the time of these events. Harper  
22 also admitted that he had been kicked out of school in the Fourth Grade, he never  
23 went to high school, he had never had a "real job" and he never obtained a driver's  
24 license.

25 Approximately 8 hours later, Harper and his passenger, a woman named Lia  
26 More, were driving in a stolen Toyota Tundra pickup truck. As Harper was  
27 driving, he became aware that Officer Koahou was behind him and tried to get  
28 away from him by running red lights and driving at speeds of 85 to 90 mph. Harper

1 failed to stop at a stop sign, struck a curb, lost control, and struck a work vehicle  
2 driven by Joseph Garcia and in which Corey Guerra was a passenger. After  
3 striking the work vehicle, Harper did not stop but instead fled the scene in the  
4 stolen Toyota. However, the stolen Toyota was damaged to the point that it could  
5 no longer be driven. Harper abandoned the stolen Toyota and both he and Moore  
6 fled the scene on foot.

7 Meanwhile, Garcia and Guerra were driving around and attempting to locate  
8 Harper after he had hit their work vehicle. As Garcia and Guerra were searching  
9 for Harper, Harper approached them and asked for a ride, but once again fled on  
10 foot when he saw they were the two men he had struck with the stolen Toyota.  
11 Harper ran through multiple yards attempting to evade Officer Koahou as well as  
12 Garcia and Guerra.

13 Meanwhile, Martin Salazar was in the driveway of his home detailing his  
14 aunt's black Honda Accord and had the car running to allow the air conditioner to  
15 cool the inside of the car. Harper approached the black Honda, jumped in, and  
16 attempted to drive off. When Salazar yelled at Harper to get out and tried to  
17 prevent him from driving off, Harper used force to try shake Salazar from the car  
18 causing him to lose his balance and get dragged by the car. At this moment, Garcia  
19 and Guerra arrived on scene and saw the struggle between Salazar and Harper.  
20 When Salazar yelled for help, his neighbor Greg Gallo and Garcia attempted to  
21 assist in forcing Harper from the car while Guerra called 911. The struggle  
22 between the men became physical with the men attempting to subdue and strike  
23 Harper and pull him from the car.

24 When Officer Koahou arrived on scene, he observed the men struggling with  
25 Harper and ordered them to move away so they would not be shot. In response to  
26 this order, Garcia and Gallo moved away from the car as Officer Koahou  
27 approached the vehicle. Officer Koahou's subsequent interactions with Harper  
28 were recorded on his belt-worn audio recording device. Officer Koahou ordered

1 Harper to get out of the car multiple times; however, Harper refused to do so. The  
2 stolen Honda was still running and Officer Koahou was concerned that Harper  
3 would attempt to flee again. When Harper refused multiple orders to get out of the  
4 vehicle, Officer Koahou deployed his taser.

5 After the taser was deployed, Harper started to reach for the gear shift of the  
6 vehicle. Officer Koahou attempted to pull Harper's hand from the gear shift and  
7 attempted to put the car in park. Officer Koahou yelled, "Don't do it! Don't do it!  
8 I'll shoot you! Stop! Stop!" Harper hit the accelerator, causing the car to move.  
9 Officer Koahou was reaching inside the car when the vehicle started to move.  
10 Officer Koahou attempted to pull back away, but his arm was trapped on Harper's  
11 chest. As the car started to move forward, Officer Koahou fired two defensive  
12 shots without aiming. As the vehicle continued to move forward, the car's  
13 momentum slammed the door on Officer Koahou. Both shots were fired within a  
14 mere 5 seconds of the deployment of the taser and before the car door struck him.  
15 Officer Koahou did not fire at Harper merely because Harper was driving away;  
16 rather, he felt that he was an imminent threat and was attempting to stop the threat.

17 After the shots were fired, the car continued to accelerate and drove for  
18 another few hundred feet before crashing. After the car came to rest, Harper got  
19 out of the car on his own. Harper was subsequently handcuffed, a tourniquet was  
20 applied to his leg, and he was transported to Loma Linda Medical Center. A  
21 shotgun was subsequently recovered from inside the stolen Toyota. As a result of  
22 these actions, Harper was convicted of theft of the Toyota, hit and run with damage  
23 on Garcia's work truck, possession of the shotgun, and carjacking of the black  
24 Honda. After he was sentenced to State Prison for these offenses, Harper continued  
25 to have problems including approximately 10 write-ups with four or five being for  
26 battery. Harper currently expects to be released from prison in 2026.



1 **III. THE EVIDENCE ABOUT HARPER'S DRUG USE IS DIRECTLY**  
2 **RELEVANT, ADMISSIBLE AND FAR MORE PROBATIVE THAN**  
3 **PREJUDICIAL**

4 Harper seeks to preclude the introduction of evidence that he was intoxicated  
5 by methamphetamine during the incident including any testimony by Defendants'  
6 expert Richard Clark. Harper freely admitted to smoking methamphetamine the  
7 morning of the incident, and unlike many of the cases cited by Harper, Officer  
8 Koahou *did* suspect Harper was under the influence prior to the shooting. See Ex.  
9 A at p. 24:3-17 and B at p. 13:13-15 to Decl. Rocawich below. While Harper  
10 understandably does not want the jury to know he was under the influence of  
11 methamphetamine, that, in and of itself, does not render the evidence in  
12 admissible; nor is the issue of whether or not Officer Koahou was aware Harper  
13 was under the influence determinative.

14 First and foremost, the evidence that Harper was under the influence of  
15 methamphetamine at the time he led Officer Koahou on a high speed pursuit in a  
16 stolen vehicle, damaged private property, fled on foot, carjacked another vehicle,  
17 failed to comply with commands to exit the vehicle then accelerated when Officer  
18 Koahou was dangerously close to the vehicle is undoubtedly relevant on the issue  
19 of Harper's Third Claim for Relief for negligence and his comparative  
20 fault/contributory negligence. Under California law, "damages awarded shall be  
21 diminished in proportion to the amount of negligence attributable to the person  
22 recovering." *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 829 (1975). In *Willis v. City of*  
23 *Fresno*, 2014 U.S. Dist. LEXIS 52565 at \*21-22 (E.D. Cal. Apr. 14, 2014), the  
24 Court specifically found that evidence of the decedent's intoxication was relevant  
25 and probative of the defendants' defense of comparative negligence.

26 Secondly, contrary to Harper's arguments, the Ninth Circuit has not held that  
27 information unknown to police officers at the time of the alleged incident can  
28 never be admissible. In fact, *Graham* held that evidence of facts unknown to a

1 police officer is admissible “in assessing the credibility of an officer’s account of  
2 the circumstances that prompted the use of force”. *Graham v. Connor*, 490 U.S.  
3 386, 399 n. 12 (1289); *See also Boyd v. City & County of San Francisco*, 576 F. 3d  
4 938, 944 (9th Cir. 2009)[Holding that where the decedent’s conduct was in dispute,  
5 information unknown to the defendant officers at the time of a fatal shooting was  
6 admissible because that information made more or less probable each side’s  
7 explanation of the decedent’s conduct.]

8 Consistent with the *Graham* principle, the Ninth Circuit has held that where  
9 the material facts are disputed, as they are here, information relevant to the conduct  
10 of the decedent leading up to the use of force is admissible. *Boyd v. City & County*  
11 *of San Francisco*, 576 F. 3d 938, 944 (9th Cir. 2009)[holding that evidence that  
12 suspect was on drugs was relevant and admissible in an excessive force case  
13 because it made assertions that suspect as acting erratically more probable].  
14 Indeed, evidence of drug intoxication has been found relevant and admissible in  
15 excessive force cases in numerous cases. *See D.W. v. Riverside County*, 2010 U.S.  
16 Dist. Lexis 35821, at \*4 (C.D. CA Mar. 11, 2010)[holding that evidence of a  
17 suspect’s intoxication was properly admitted at trial “because this evidence was  
18 probative of decedent’s conduct]; *Luchtel v. Hagemann*, 623 F. 3d 975, 980 (9th  
19 Cir. 2010) [citing hospital medical report showing that plaintiff was under the  
20 influence of crack cocaine in considering whether the police officers used a  
21 reasonable amount of force while arresting her]; *Saladino v. Winkler*, 609 F. 2d  
22 1211, 1224 (7th Cir. 1979)[evidence of plaintiff’s intoxication deemed relevant  
23 and admissible because the evidence “Tends to make more probable that the  
24 plaintiff acted as a the defended contended he did or that the plaintiff otherwise  
25 conducted himself in such a manner as to place the defendant reasonably in fear of  
26 his life”]; *Turner v. White*, 980 F. 2d 1180, 1182-82 (8th Cir. 1992)[evidence of  
27 intoxication was relevant in considering the officer’s actions in relation to all  
28 circumstances that confronted him, in accordance with *Graham*; *Dibbern v. City of*

1 *Bakersfield*, 2024 U.S. Dist. LEXIS 155671, \*11 [Evidence of Plaintiff's drug  
2 intoxication by methamphetamine was relevant and admissible.]

3 Here, there are significant disputes in testimony such that information  
4 relevant to the conduct of Harper leading up to the use of force, including his  
5 intoxication, is admissible. *See Boyd*, supra 576 F. 3d at 944. Most notably, Harper  
6 testified in deposition that before the shooting, and even before Officer Koahou  
7 tased him, he surrendered and had his hands raised in surrender. Ex. A at p. 52:22-  
8 25, 53:1-20 to Decl. Rocawich below. Harper also testified that Officer Koahou  
9 had both hands on his weapon when he fired. Ex. A at p. 55:25, 56:1-6. This is in  
10 stark contrast to what Officer Koahou will testify, which is that Harper never  
11 surrendered, never raised his hands, and was actively struggling with Koahou, with  
12 one of Koahou's arms trapped under Harper's, when the shots were fired. Further,  
13 Harper testified in deposition that he was "forced" to accelerate the vehicle  
14 feigning innocence in connection with the action putting Officer Koahou in danger  
15 of serious and immediate harm. Ex. A at 58:19-21. This vastly differs from Officer  
16 Koahou's version of events wherein Harper had his hand on the shifter,  
17 presumably to put the car into gear, and that Officer Koahou grabbed Harper's  
18 hand trying to prevent him from doing so immediately prior to Harper accelerating.

19 The fact that Harper was under the influence of methamphetamine is a  
20 relevant factor for the jury to consider in deciding whether Harper surrendered and  
21 whether he had no intention of accelerating as he claims or if he was still  
22 attempting to evade and escape. Evidence that Harper was under the influence of  
23 methamphetamine is also relevant to the jury's determination of what occurred and  
24 to explain Harper erratic conduct including his leading the police on a vehicle  
25 pursuit, his hit and run, his repeated attempts to evade, his efforts to flee on foot,  
26 his carjacking a car and his failure to stop.

27 Finally, courts have also routinely admitted evidence that a plaintiff was  
28 intoxicated or under the influence because it is relevant to the plaintiff's credibility

1 in remembering the events at issue. *Jackson v. Cnty of San Bernardino*, 194 F.  
2 Supp. 3d 1004, 1010-11(C.D. CA 2016)[denying the plaintiff’s motion in limine in  
3 an excessive force case to the extent it sought to exclude evidence (which included  
4 a positive toxicology result) that the plaintiff was intoxicated with drugs or alcohol  
5 on the day of the incident because the plaintiff’s intoxication during a standoff with  
6 law enforcement was relevant to his credibility in remembering events.]; *Zucchella*  
7 *v. Olympusat, Inc.*, 2023 WL 2633947, at \* 4 (C.D. CA Jan 10, 2023)[finding  
8 plaintiff’s drinking at an event about which she testified was relevant to her ability  
9 to recall and perceive events]; *Rivas v. Knight Transportation Inc.*, 2017 WL  
10 3453365, at \* 2 (C.D. CA Mar. 24, 2017)[holding same]; *Gorman v. City of San*  
11 *Diego*, 2012 WL 1835689, at \* 7 (S.D. CA May 12, 2012)[holding same] *citing*  
12 *Rheume v. Patterson*, 289 F. 2d 611, 614 (2nd Cir. 1961).

13 Finally, one of the factors that is clearly set forth in Ninth Circuit Model  
14 Jury Instruction 9.25 is “the parties relative culpability i.e., which party created the  
15 dangerous situation and which party is more innocent.” Thus, its probative value  
16 must be substantially outweighed by any one of the alleged risks of unfair  
17 prejudice, confusion of issues, etc. *See United States v. Lloyd*, 807 F. 3d 1128,  
18 1151-52 (9th Cir. 2015). Harper’s being under the influence of methamphetamine  
19 and displaying the symptoms which are reflective of that intoxication demonstrates  
20 that he created the dangerous condition and he is not “more innocent”.

21 As noted above, Harper admitted to methamphetamine use the day of the  
22 incident. Additionally, Harper had blood drawn on September 10, 2021, at 0013  
23 (about 11 hours after the incident) that was tested for substances at Bio-Tox  
24 Laboratories. The test results demonstrated methamphetamine at a concentration of  
25 179 ng/mL, and amphetamine (metabolite of methamphetamine) at a concentration  
26 of 26 ng/mL. Since this blood was drawn several hours after the incident, it is  
27 almost certain that his blood levels of methamphetamine were higher at the time of  
28 the incident. Defendants have identified multiple witnesses from Bio-Tox

1 Laboratories who did the testing and generated the report to come testify at trial to  
2 lay the foundation for the Toxicology Report and to testify as to the levels that  
3 were detected hours after the subject incident. It is Defendants' position that the  
4 aforementioned witnesses can testify as to the results of the Toxicology Report.

5 To the extent Defendants seek to move the Report into evidence, Defendants  
6 can lay the proper foundation for one of the hearsay exceptions. *See* Fed. R. Evid.  
7 803(4) and 803(6)(B); *United States v. De La Cruz*, 514 F.3d 121, 133 (1st Cir.  
8 2008); *United States v. Feliz*, 467 F.3d 227, 236 (2d Cir. 2006); *Fields v. City of S.*  
9 *Houston, Tex.*, 922 F.2d 1183, 1191 n. 9 (5th Cir. 1991); *Sullivan v. City of Buena*  
10 *Park*, 2022 U.S. Dist. LEXIS 91684, at \*10 (C.D. CA Apr. 11, 2022). Further,  
11 even if the Report did not come in, there is no reason that the levels would not. *See*  
12 e.g., *Jackson v. Cnty of San Bernardino*, 194 F. Supp. 3d 1004, 1010-11 (C.D. CA  
13 2016)[denying the plaintiff's motion in limine in an excessive force case to the  
14 extent it sought to exclude evidence including a positive toxicology result].

15 Dr. Clark, whose testimony Harper seeks to exclude, renders opinions that  
16 can be easily summarized as follows: Harper was under the influence of  
17 methamphetamine and his non-compliant behavior as described by witnesses at the  
18 time of the subject incident is consistent with being under the influence of  
19 methamphetamine. The effects of methamphetamine contributed to or led to his  
20 reckless driving and noncompliant behavior witnessed on that evening. Quite  
21 frankly, the exact level of methamphetamine in Harper's blood at the time of the  
22 subject incident is not required to render such an opinion. Other than the fact that  
23 Harper does not want his methamphetamine intoxication to be introduced into  
24 evidence, Dr. Clark's opinions should not be meaningfully controversial  
25 particularly given Harper's admission of methamphetamine use. Based on the  
26 above, there is no doubt that evidence of Plaintiff's intoxication is relevant and  
27 admissible. Any concern about the evidence being purportedly "more prejudicial  
28 than probative" can be addressed by simply offer a limiting instruction.

**IV. EVIDENCE ABOUT HARPER’S CRIMINAL HISTORY, POSSESSION OF A FIREARM, AND PRISON DISCIPLINARY HISTORY IS DIRECTLY RELEVANT, ADMISSIBLE AND FAR MORE PROBATIVE THAN PREJUDICIAL**

Relevancy is very broadly defined. "Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. District courts have broad discretion in determining whether evidence is relevant for discovery purposes. *See Surfvivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005). "[E]vidence of other crimes must be relevant to prove an issue in the case. *United States v. Powell*, 587 F.2d 443, 448 (9th Cir. 1978).

As above, the evidence of Harper’s extensive criminal history and possession of a firearm the day of the incident is directly relevant – even if not known to Officer Jones at the time of the shooting. In *Dominguez v. City of Los Angeles*, 2018 U.S. Dist. LEXIS 224976 (C.D. Cal. October 9, 2018), an officer-involved shooting case, the District Court ruled on a Motion in Limine and stated that “Courts may permit the introduction of information unknown to an officer at the time of the shooting.” *Quoting Graham*, 490 U.S. at 399 n.12 [“[I]n assessing the credibility of an officer's account of the circumstances that prompted the use of force, a factfinder may consider . . . evidence that the officer" did not know at the time of the alleged rights violation.]; and *Boyd*, 576 F.3d at 944. Harper’s criminal history, being a felon in possession on the day of the incident, numerous disciplinary write-ups while in prison makes it far more probable that he was intent on escaping arrest and less probable that he simply “surrendered” to Officer Koahou as he alleges.

As to admissibility, evidence of prior wrongful conduct is not admissible to show the bad character of the defendant. Fed. R. Evid. 404(b). In other words,



evidence of the bad character of a plaintiff where the only relevance is propensity is forbidden. However, Rule 404(b) permits “other crimes” evidence if its purpose is to prove *something other* than a disposition to commit the crime charged. *See Heath v. Cast*, 813 F.2d 254, 259 (9th Cir.) *cert. denied*, 484 U.S. 849, 108 S. Ct. 147, 98 L. Ed. 2d 103 (1987) [past violent acts of the plaintiff admissible in an excessive force case when relevant to some issue other than propensity to act in a violent manner.] “Other crimes” evidence is also admissible when offered as evidence of a defendant's motive, common scheme or plan, preparation, intent, knowledge, identity, or absence of mistake or accident. Fed. R. Evid. 404(b).

Here, Defendants do not offer evidence of “other crimes” by Harper to show that he had a propensity or acted in conformity. Rather, Harper’s conduct is relevant to the central issue in this case, namely the reasonableness of the force necessary to take Harper into custody. More specifically, evidence about Harper’s criminal history and his being armed at various points of the encounter are all directly relevant to the totality of circumstances facing Officer Koahou, the reasonable suspicion/probable cause of Officer Koahou, the reasonableness of Officer Koahou’s subjective beliefs and the intent, preparation and/or plan of Harper.

Harper has characterized himself as surrendering and of not intentionally accelerating the vehicle. Essentially, that he was little to no threat to Officer Koahou at the time force was used – a key issue in the case. Harper was anything but innocuous or a compliant suspect as demonstrated by his violent history, his possession of a firearm that day despite being a convicted felon, his crimes leading up to the shooting and his continued violent behavior after conviction. In other words, Harper’s intent that day becomes exceedingly clear when these things are considered. Moreover, Officer Koahou will testify that persons in stolen vehicles and persons who commit carjackings are often armed thus creating a heightened sense of danger in interacting with such individuals. Harper, it turns out, was

1 indeed armed during various points of the incident.

2 If the court determines the “other crimes” evidence is relevant and  
3 admissible under Rule 404(b), the court must next determine whether the probative  
4 value of the evidence is substantially outweighed by the probability that its  
5 admission would create substantial danger of undue prejudice, of confusing the  
6 issues, or of misleading the jury. (*United States v. Mayans*, 17 F.3d 1181, 1183  
7 (9th Cir. 1994); *United States v. Lozano*, 623 F.3d 1055, 1060 (9th Cir. 2010); Fed.  
8 R. Evid. 403).

9 Here, Defendants admit the evidence at issue is prejudicial to Plaintiffs.  
10 However, “proof that evidence was prejudicial to one party is insufficient to  
11 establish that the prejudice was unfair.” (*Boyd*, supra 576 F.3d at 948.) Relevant  
12 evidence “***is not rendered inadmissible because it is of a highly prejudicial***  
13 ***nature. . . . The best evidence often is.***” (*United States v. Parker*, 549 F.2d 1217,  
14 1222 (9th Cir. 1977) quoting *United States v. Mahler*, 452 F.2d 547, 548 (9th Cir.  
15 1971) (per curiam) [emphasis added]). Rule 403 “refers only to unfair prejudice.”  
16 *United States v. Decinces*, 808 F.3d 785, 791 (9th Cir. 2015).

17 Here, the probative value of the evidence far outweighs their prejudicial  
18 effect. As discussed in detail above, the probative value of the evidence at issue is  
19 significant as it establishes Harper’s intentions, the state of mind of Officer  
20 Koahou, the totality of the circumstances facing Officer Koahou, and the  
21 appropriateness and objective reasonableness of Officer Koahou’s response. This  
22 is especially true in light of Plaintiffs’ characterizations of Harper as compliant and  
23 posing little to no threat. Further, the prejudicial effect of the evidence can be  
24 minimized with a limiting instruction designed to prevent the jury from  
25 considering the evidence for improper purposes.

26 Finally, Harper’s criminal history is admissible for impeachment under  
27 Federal Rule of Evidence 609. Evidence that a witness has been convicted of a  
28 crime, punishable by imprisonment exceeding one year, is admissible for purposes



1 of attacking a witness's truthful character. Fed. R. Evid. 609(a)(1)(A). Prior  
2 convictions involving elements or admitted acts of dishonesty or false statements  
3 may also be used to impeach, regardless of the length of incarceration. Fed. R.  
4 Evid. 609(a)(2). Under Rule 609(b), however, prior convictions older than ten  
5 years are admissible for impeachment purposes if their probative value  
6 substantially outweighs any prejudicial effect and reasonable written notice of  
7 intent to use is given. Fed. R. Evid. 609(b).

8 The Ninth Circuit has outlined five factors for courts to consider when  
9 balancing the probative value of evidence against the prejudicial effect under Rule  
10 609: (1) the impeachment value of the prior crime; (2) the point in time of the  
11 conviction and the witness's subsequent history; (3) the similarity between the past  
12 crime and the charged crime; (4) the importance of the party's testimony; and (5)  
13 the centrality of the party's credibility. *United States v. Hursh*, 217 F.3d 761, 768  
14 (9th Cir. 2000).

15 Here, Harper has been convicted of multiple felonies, has a prior “strike”,  
16 was a felon in possession the day of the incident all of which should be admitted  
17 for impeachment and is also directly relevant to show bias and motives and  
18 relevant to the instant case. Harper’s criminal history prior to the incident a his  
19 continued violence in prison shows a blatant disregard both for authority as well as  
20 for the sanctity of human life. Moreover, if Harper misrepresents his character and  
21 his prior criminal history and attempts to portray himself as a person who is a law-  
22 abiding citizen, then Defendants should be allowed to impeach him with his  
23 criminal history. *See United States v. Cook*, 608 F.2d 1175, 1187 (9th Cir. 1979).

24 //

25 //

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28 //

1 **V. CONCLUSION**

2 For all of the foregoing reasons, Defendants respectfully request the Court  
3 deny Plaintiffs' Motion in Limine No. 1.

4  
5 Dated: March 20, 2025

Respectfully Submitted,  
6 JONES MAYER

7  
8  
9 By: s/Denise L. Rocawich

JAMES R. TOUCHSTONE  
10 DENISE L. ROCAWICH  
11 Attorneys for Defendants City of  
12 Redlands and Officer Koahou  
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**DECLARATION OF DENISE LYNCH ROCAWICH IN SUPPORT OF  
OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1**

I, Denise Lynch Rocawich, declare:

1. I am an attorney licensed to practice law in the State of California. I am a partner in the law firm of Jones & Mayer. I am counsel of record for the City of Fullerton and Officer Koahou. I have personal knowledge of the following facts and, if called as a witness, I would and could competently testify thereto.

2. Attached hereto as Exhibit "A" are true and correct copies of relevant pages of the Deposition of Plaintiff, Justin Harper which was taken on October 23, 2024 in front of a certified court reporter.

3. Attached hereto as Exhibit "B" are true and correct copies of relevant pages of the Deposition of Defendant, Officer Koahou which was taken on October 10, 2024 in front of a certified court reporter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20th day of March, 2025, at Fullerton, California.

/s/Denise Lynch Rocawich  
Denise Lynch Rocawich, Esq.

## **EXHIBIT A**

1 UNITED STATES DISTRICT COURT FOR THE  
2 CENTRAL DISTRICT OF CALIFORNIA

3 --o0o--

4  
5 JUSTIN CODY HARPER,

CASE NO.:

5:23-cv-00695 SSS (DTBx)

6 Plaintiff,

7 vs.

8 CITY OF RELANDS, REDLANDS

POLICE DEPARTMENT, POLICE

9 OFFICER KOAHOU, and DOES 1

through 10, Inclusive,

10 Defendants.

11 \_\_\_\_\_/

12  
13  
14  
15  
16 VIDEOTAPED DEPOSITION OF JUSTIN CODY HARPER

17 VACAVILLE, CALIFORNIA

18 OCTOBER 23, 2024

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22  
23  
24 REPORTED BY: CARI L. GONZAGA, CSR NO. 12401

25 FILE NO.: 6932631

Page 1

UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA

--o0o--

JUSTIN CODY HARPER,

CASE NO.:

5:23-cv-00695 SSS (DTBx)

Plaintiff,

vs.

CITY OF RELANDS, REDLANDS  
POLICE DEPARTMENT, POLICE  
OFFICER KOAHOU, and DOES 1  
through 10, Inclusive,

Defendants.

\_\_\_\_\_/

Deposition of JUSTIN CODY HARPER, taken on  
behalf of the Defendants, at California State Prison  
Solano, 2100 Peabody Road, Vacaville, California 95687,  
commencing at 10:41 a.m., Wednesday, October 23, 2024,  
before Cari L. Gonzaga, CSR No. 12401.

A P P E A R A N C E S :

FOR THE PLAINTIFF:

BY: JAMES S. TERRELL, ESQ.  
LAW OFFICE OF JAMES S. TERRELL  
15411 Anacapa Road  
Victorville, CA 92393  
760-951-5850  
jim@talkterrell.com

FOR THE DEFENDANT:

BY: DENISE L. ROCAWICH, ESQ.  
JONES MAYER  
3777 North Harbor Boulevard  
Fullerton, CA 92835  
714-446-1400  
dlr@jones-mayer.com

ALSO PRESENT: STEPHEN SANTOS, VIDEOGRAPHER

1 you have any alcohol?

2 A No.

3 Q Had you taken any drugs?

4 A Earlier, the night before.

5 Q And was that methamphetamine?

6 A Yes.

7 Q And how was it taken, liked smoked?

8 A Smoked.

9 Q How much?

10 A Maybe like ten hits throughout the night.

11 Q When -- what part of the night was the last  
12 hit?

13 A Four, 4-ish.

14 Q Four p.m.?

15 A In the morning.

16 Q Oh, a.m.?

17 A Yes.

18 Q So how many hours before you were shot did you  
19 smoke your last bit of meth?

20 A Maybe like eight hours or more, probably like  
21 eight, somewhere in there, from four until like the  
22 moment I got shot, so I didn't do nothing.

23 Q And there was a glass meth pipe found with the  
24 Toyota Tundra we'll talk about a little bit later.

25 Was that your pipe?



1 Q With both hands?

2 A I don't know if it was both or one. I  
3 remember he was trying to yank me out of the car though.

4 Q And what were you doing?

5 A Grabbing onto the steering wheel.

6 Q Did you ever grab onto the officer?

7 A No.

8 Q So did you ever grab onto the officer's arm at  
9 any point prior to the shooting?

10 A I don't think so. Maybe he was trying to pull  
11 me out. I'm trying to cover myself. I didn't grab him  
12 though.

13 Q Prior to being tased, did you see the taser?

14 A No, but in time, I remember that a taser gun  
15 hit me.

16 Q Okay. And did the officer tell you he was  
17 going to tase you?

18 A Yes.

19 Q Do you remember how many times he told you he  
20 was going to tase you before he actually did?

21 A No.

22 Q So before being tased, he warned you he was  
23 going to do that, so you knew you might be tased; is  
24 that accurate?

25 A Yes, that's why I tried to surrender.

1 Q At what point did you try to surrender?

2 A Once I thought they were going to shoot me, I  
3 didn't really know if they were or not.

4 Q Did you try and surrender before or after you  
5 were tased?

6 A Before.

7 Q And when you say you tried to surrender, what  
8 did you do?

9 A I told them I was ready to get out of the  
10 vehicle.

11 Q Did you let go of the steering wheel?

12 A Yes.

13 Q And where were your hands, at that point, when  
14 you let go of the steering wheel and said you're ready  
15 to give up and get out of the vehicle?

16 A I put them up.

17 Q So when you were tased, you were no longer  
18 holding onto the steering wheel, and your hands were up;  
19 is that accurate?

20 A Yes.

21 Q Do you know at the time you were tased,  
22 whether the Honda was in park or drive?

23 A When I pulled out in reverse, I put it in  
24 drive but it wasn't going.

25 Q Was the emergency brake on?

1 A No.

2 Q Did you have any marks on any part of your  
3 body besides the obvious?

4 A Well, on this side of my body, my leg was  
5 broken, my fingers were shot, so I went through two  
6 surgeries. It took a while. I didn't wake up for a  
7 while.

8 Q Okay. So besides the gunshot wounds, did you  
9 have any kind of other wounds to your body?

10 A I don't know, Miss. I was in and out --

11 MS. TERRELL: No more questions.

12 Next question.

13 BY MS. ROCAWICH:

14 Q So you said you were tased, and then you hit  
15 the accelerator; is that correct?

16 A Yes.

17 Q And then you were shot after hitting the  
18 accelerator; is that correct?

19 A Yes.

20 Q Did the car move forward when you hit the  
21 accelerator?

22 A Yes.

23 Q And where was the cop when that happened?

24 A On the side of the vehicle.

25 Q Was he still touching you?

1 A When he shot me?

2 Q Yes, did he have one hand on you, or did he  
3 have both hands on his gun?

4 A Both hands were on the gun, but I know he --  
5 well, actually, they had to have both hands on their  
6 gun, so yeah.

7 Q Would you agree that a car can be used to  
8 injure someone?

9 A Yes.

10 Q And then if you get run over by a car, you  
11 could be seriously injured?

12 A Yes.

13 Q Or maybe even killed?

14 A Yes.

15 Q So immediately before you were shot, the  
16 officer was being, kind of, dragged along the car as you  
17 started driving; is that correct?

18 MS. TERRELL: Misstates the testimony about  
19 being dragged.

20 Go ahead.

21 THE WITNESS: About what?

22 BY MS. ROCAWICH:

23 Q Was the officer being dragged?

24 A No.

25 Q And you said you never layed hands on the

1 Q So even after you weren't still shocked, you  
2 were still pressing the accelerator; is that correct?

3 A No, it was driving slowly down the road, and  
4 then it stopped.

5 Q So you got tased and then you got shot and  
6 then you said the car was moving slowly towards San  
7 Bernardino?

8 A It went fast and hit the court and it crashed  
9 and it started rolling. It didn't accelerate anymore  
10 after that.

11 Q So when it was going fast, was that after you  
12 were shot?

13 A Yes.

14 Q And you weren't being shocked anymore by the  
15 taser; is that correct?

16 MS. TERRELL: Do you understand the question?

17 THE WITNESS: No.

18 BY MS. ROCAWICH:

19 Q So you were shocked by the taser which you  
20 said forced you to accelerate; is that true?

21 A Yes.

22 Q And then you continued to accelerate even  
23 after you were no longer being tased; is that correct?

24 A Yes. Do you know how many houses are on that  
25 bluff?

REPORTER'S CERTIFICATE

I, CARI L. GONZAGA, CSR No. 12401, Certified  
Shorthand Reporter, certify:

That the foregoing proceedings were taken  
before me at the time and place therein set forth, at  
which time the witness was put under oath by me;

That the testimony of the witness, the  
questions propounded, and all objections and statements  
made at the time of the examination were recorded  
stenographically by me and were thereafter transcribed;

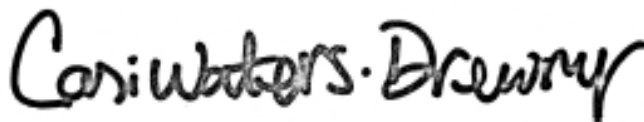
That the foregoing is a true and correct  
transcript of my shorthand notes so taken.

I further certify that I am not a relative or  
employee of any attorney of the parties, nor financially  
interested in the action.

I declare under penalty of perjury under the  
laws of California that the foregoing is true and  
correct.

Reading and signing was requested.

Dated this 27th day of November, 2024.



CARI L. GONZAGA, CSR NO. 12401

1 JAMES S. TERRELL, ESQ.

2 jim@talkterrell.com

3 12/2/2024

4 RE: Harper, Justin Cody v. City Of Redlands

5 10/23/2024, Justin Cody Harper, (#6932631).

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext

10 to schedule a time to review the original transcript at

11 a Veritext office.

12 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF

13 Transcript - The witness should review the transcript and

14 make any necessary corrections on the errata pages included

15 below, notating the page and line number of the corrections.

16 The witness should then sign and date the errata and penalty

17 of perjury pages and return the completed pages to all

18 appearing counsel within the period of time determined at

19 the deposition or provided by the Code of Civil Procedure.

20 Contact Veritext when the sealed original is required.

21 \_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of

22 Counsel - Original transcript to be released for signature

23 as determined at the deposition.

24 \_\_\_ Signature Waived - Reading & Signature was waived at the

25 time of the deposition.

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1     \_X\_Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF  
2         Transcript - The witness should review the transcript and  
3         make any necessary corrections on the errata pages included  
4         below, notating the page and line number of the corrections.  
5         The witness should then sign and date the errata and penalty  
6         of perjury pages and return the completed pages to all  
7         appearing counsel within the period of time determined at  
8         the deposition or provided by the Federal Rules.  
9     \_\_\_ Federal R&S Not Requested - Reading & Signature was not  
10        requested before the completion of the deposition.



## **EXHIBIT B**

**JUSTIN CODY HARPER vs CITY OF REDLANDS, ET AL.**  
**Officer Nicholas Koahou on 10/10/2024**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3  
4 JUSTIN CODY HARPER, )  
5 Plaintiff, )  
6 vs. ) Case No.  
7 CITY OF REDLANDS, REDLANDS POLICE ) 5:23-CV-00695-SSS-DTB  
8 DEPARTMENT, POLICE OFFICER KOAHOU, )  
9 and DOES 1 through 10, inclusive, )  
10 Defendants. )  
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23 Reported Stenographically By:  
24 Jinna Grace Kim, CSR No. 14151  
25 Job No.: 108815

**JUSTIN CODY HARPER vs CITY OF REDLANDS, ET AL.**  
**Officer Nicholas Koahou on 10/10/2024**

**Page 2**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3

4 JUSTIN CODY HARPER, )  
5 Plaintiff, )  
6 vs. ) Case No.  
7 CITY OF REDLANDS, REDLANDS POLICE ) 5:23-CV-00695-SSS-DTB  
8 DEPARTMENT, POLICE OFFICER KOAHOU, )  
9 and DOES 1 through 10, inclusive, )  
10 Defendants. )  
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The remote videoconference deposition of OFFICER  
NICHOLAS KOAHOU, taken on behalf of the Plaintiff, beginning at  
2:07 p.m., and ending at 3:50 p.m. on Thursday, October 10, 2024,  
before Jinna Grace Kim, Certified Stenographic Shorthand  
Reporter No. 14151.

**JUSTIN CODY HARPER vs CITY OF REDLANDS, ET AL.**  
**Officer Nicholas Koahou on 10/10/2024**

Page 3

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BY: JAMES R. TOUCHSTONE, ESQ.

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E-mail: jrt@jones-mayer.com

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**JUSTIN CODY HARPER vs CITY OF REDLANDS, ET AL.**  
**Officer Nicholas Koahou on 10/10/2024**

Page 13

1 A. No.

2 Q. Did you have any specific information that he was  
3 under the influence of drugs or alcohol?

4 A. No.

5 MR. TOUCHSTONE: Well, Dale, I'm going to interpose  
6 an objection. Vague as to time.

7 Are you referring throughout the entire incident, or  
8 when he first saw him?

9 MR. GALIPO: When he first saw him.

10 MR. TOUCHSTONE: Okay. Go ahead. I'm sorry.

11 THE WITNESS: When I first saw him I did not.

12 BY MR. GALIPO:

13 Q. Did you ever have any information specifically that  
14 he was under the influence of drugs or alcohol?

15 A. I suspected that he was once I deployed the Taser.

16 Q. Did you shoot him because you thought he was under  
17 the influence?

18 A. No.

19 Q. What was the general information you had at the time  
20 regarding the call in the beginning?

21 A. The general information was they saw a vehicle had  
22 driven through a license plate later in the city.

23 Q. And did you see this vehicle at some point?

24 A. Yes, I did.

25 Q. And what street was the vehicle on when you saw

**JUSTIN CODY HARPER vs CITY OF REDLANDS, ET AL.**  
**Officer Nicholas Koahou on 10/10/2024**

Page 40

1 A. Correct.

2 Q. And it continued to be in stop all the way up until  
3 the time you reached in towards the gear shifter?

4 A. Correct.

5 Q. And then almost immediately after that, it merged or  
6 started to move forward?

7 A. Accelerated forward, yes.

8 Q. Do you know how long it had been stopped for?  
9 In other words, had it been stopped for like 30  
10 seconds?

11 Do you have any estimate before it moved forward  
12 again?

13 A. My best estimate would be 15 to 20 seconds.

14 Q. And when you reached in with your right hand, did  
15 you grab Mr. Harper's arm or hand?

16 A. I grabbed his hand.

17 Q. And which hand of his did you grab?

18 A. His right.

19 Q. And was his right hand on the shifter at that  
20 point?

21 A. Yes.

22 Q. And could you tell if the shifter moved after you  
23 grabbed his hand?

24 A. I just knew that the vehicle started to move  
25 forward.

**JUSTIN CODY HARPER vs CITY OF REDLANDS, ET AL.**  
**Officer Nicholas Koahou on 10/10/2024**

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CERTIFICATE

OF

CERTIFIED STENOGRAPHIC SHORTHAND REPORTER

I, JINNA GRACE KIM, CSR No. 14151, a Certified  
Stenographic Shorthand Reporter of the State of California,  
do hereby certify:

That the foregoing proceedings were taken before me  
at the time and place herein set forth;

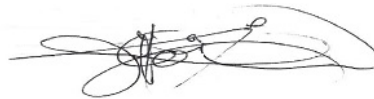
That any witnesses in the foregoing proceedings,  
prior to testifying, were placed under oath;

That a verbatim record of the proceedings was made  
by me, using machine shorthand, which was thereafter  
transcribed under my direction;

Further, that the foregoing is an accurate  
transcription thereof.

I further certify that I am neither financially  
interested in the action, nor a relative or employee of any  
attorney of any of the parties.

IN WITNESS WHEREOF, I have subscribed my name, this  
date: October 10, 2024.



Jinna Grace Kim, CSR No. 14151